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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THOMAS MCKINNON and GERI
MCKINNON,

Plaintiffs,

v.

ONEWEST BANK, FSB, et al.,

Defendants.

2:12-CV-329JCM (VCF)

ORDER

Presently before the court is defendant NDEX West, LLC's motion to dismiss. (Doc. #7). *Pro se* plaintiffs Thomas and Geri McKinnon did not file an opposition, but rather filed an amended complaint on April 9, 2012. (Doc. #14). Also before the court is defendant's motion to expunge lis pendens. (Doc. #9). Plaintiffs filed an opposition. (Doc. #13).

The property at issue in this case is located at 6208 Sweetbriar Court, Las Vegas, Nevada. (Doc. #1). On September 26, 2006, plaintiffs borrowed \$223,275 to purchase the property, and secured the loan with a deed of trust against the property. (Doc. #8, Exs. 1 and 2). Plaintiffs stopped making payments on the loan, and defendant recorded a notice of breach and election to sell under deed of trust on December 28, 2009. (Doc. #8, Ex. 3).

Plaintiffs elected to participate in Nevada's foreclosure mediation program, and a mediation was held on July 20, 2010. The foreclosure mediation program issued a foreclosure certificate on May 17, 2011. (Doc. #7, Ex. 5). Plaintiffs filed the instant action on February 29, 2012, alleging

1 one claim for violation of the Fair Debt Collection Practices Act. (Doc. #1).

2 Plaintiffs filed their first amended complaint on April 9, 2012, 18 days after defendant filed
3 a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Therefore, plaintiffs'
4 amendment was as of right under Federal Rule of Civil Procedure 15(a)(1)(B).

5 Accordingly,

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant NDEX West,
7 LLC's motion to dismiss (doc. #7) be, and the same hereby is, DENIED as moot.

8 IT IS FURTHER ORDERED that defendant NDEX West, LLC's motion to expunge lis
9 pendens (doc. #9) be, and the same hereby is, DENIED as moot.

10 DATED April 16, 2012.

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13 **UNITED STATES DISTRICT JUDGE**